

PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of Victor Kutsar :

Notice of Apparent Violation : Case No.

and Intent to Assess : 22-570-TR-CVF

Forfeiture. :

- - -

PROCEEDINGS

Before Jesse Davis, Attorney Examiner, held at
the Public Utilities Commission of Ohio, Hearing
Room 11-D, Columbus, Ohio, on Tuesday, August
22, 2023, at 10:00 A.M.

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Columbus, Ohio 43215
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- - -

1 APPEARANCES:

2 Mr. Victor Kutsar
3 758 Grayton Road
4 Berea, Ohio 44017

5 Appearing Pro se.

6 Ms. Ashley Wnek
7 Assistant Attorney General
8 30 East Broad Street, 26th Floor
9 Columbus, Ohio 43215

10 On behalf of the Staff of the
11 Public Utilities Commission
12 of Ohio.

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INDEX TO WITNESSES		
- - -		
STAFF WITNESSES	DIRECT	CROSS
Drew Bauer	6	14
Bradley Long	16	
RESPONDENT'S WITNESSES		
Victor Kutsar	24	37

- - -

INDEX TO EXHIBITS

- - -

STAFF EXHIBITS

MARKED ADT

1	Driver/Vehicle Examination Report	9	14
2	Notice of Apparent Violation and Intent to Assess Forfeiture	20	24
3	Notice of Preliminary Determination	21	24

RESPONDENT'S EXHIBITS

1	Text Mesangial Information	35	45
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1 Tuesday Morning,
2 August 22, 2023.

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4 ATTORNEY EXAMINER: Good morning,
5 everyone. Thanks for being here. It's about
6 10:03 A.M. My name is Jesse Davis, I am the
7 Attorney Examiner assigned by the Commission to
8 hear this case.

9 At this time and place the Public
10 Utilities Commission of Ohio as set for hearing
11 Case No. 22-570-TR-CVF which is captioned In the
12 Matter of Victor Kutsar, dba Emerson Trucking,
13 LLC, Notice of Apparent Violation and Intent to
14 Assess Forfeiture.

15 So just to get started we are going
16 to take appearances starting with Staff.

17 MS. WNEK: Ashley Wnek, from the
18 Attorney General's office, representing the
19 Staff of the Public Utilities Commission, 30
20 East Broad Street, Columbus, Ohio 43215.

21 ATTORNEY EXAMINER: Thank you. And,
22 Mr. Kutsar, if you could just state and spell
23 your name and your address.

24 MR. KUTSAR: Vector Kutsar, 758
25 Grayton Road, Berea, Ohio 44017.

1 ATTORNEY EXAMINER: Thank you very
2 much. And, Staff, you can begin.

3 MS. WNEK: Thank you, your Honor.
4 On behalf of the transportation Staff of the
5 Public Utilities Commission of Ohio, Dave Yost,
6 Ohio Attorney General; John Jones, Section Chief
7 of the Public Utilities Commission, and we
8 intend to show that the Respondent, Mr. Kutsar,
9 violated Code Section 49 CF 392.80(a).

10 We will show today that he was
11 texting while driving with the testimony of
12 Inspector Bauer. And the inspection as well as
13 the report, it was Level 3 inspection, and
14 through Mr. Bauer's testimony we will be able to
15 demonstrate by a preponderance of the evidence
16 that this code section was violated and Mr.
17 Kutsar should be assessed the appropriate
18 forfeiture.

19 And at this time, your Honor, I
20 would like to call Inspector Bauer to the stand.

21 (WITNESS SWORN)

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23 INSPECTOR DREW BAUER
24 called as a witness, being first duly sworn,
25 testified as follows:

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DIRECT EXAMINATION

By Ms. Wnek:

Q. Please state your full name for the record.

A. Drew Bauer.

Q. And where were you employed at the time of the incident in question?

A. The Ohio State Highway Patrol.

Q. Thank you. Where are you employed now?

A. The Public Utilities Commission of Ohio.

Q. And moving back to your position with the Highway Patrol, what were your duties and responsibilities?

A. I was a Motor Carrier Enforcement Inspector attached to roadside inspections, passenger vehicle inspections, educate the motorist public on traffic laws and motor carrier regulations.

Q. What training did you have in that area?

A. Went through all the NAIC, North America Instructor Courses, Part A, Part B, passenger vehicle, general hazmat, as well as my

1 continuing education throughout my tenure at the
2 Highway Patrol.

3 Q. Thank you. Are motor carrier
4 inspections conducted to protect the safety of
5 Ohio's people traveling through Ohio?

6 A. They are.

7 Q. How many inspections did you perform
8 on average a year when you were with the Patrol?

9 A. Approximately a thousand per year.

10 Q. And for this particular inspection
11 did you complete an examination report?

12 A. I did.

13 Q. And I want to direct your attention
14 to March 15th, 2022.

15 MS. WNEK: And, your Honor, if I may
16 pass out the exhibits at this time.

17 ATTORNEY EXAMINER: You may.

18 Q. And directing you to March 15th,
19 2022. Were you on duty that day?

20 A. I was.

21 Q. Do you recall your job assignment
22 and duties and responsibilities on that date?

23 A. I do.

24 Q. Thank you. On that day did you have
25 an opportunity to inspect a vehicle that was

1 being driven and operated by Mr. Kutsar?

2 A. I did.

3 Q. Thank you. And do you have an
4 independent recollection of that?

5 A. I do.

6 Q. Thank you.

7 MS. WNEK: And as we mentioned I
8 handed Mr. Bauer Staff Exhibit 1.

9 Q. And moving toward that, what level
10 of inspection was conducted on March 15th?

11 A. A Level 3.

12 Q. And could you describe that?

13 A. Traveling north on 71 I observed a
14 bobtail tractor-trailer's right tires crossing
15 the right line of the highway. I parked the
16 vehicle on the left side and peered up into the
17 window and observed the driver manipulating a
18 cell phone with his right hand that was mounted
19 on the windshield of the tractor-trailer.

20 Q. Do you recognize that driver in the
21 room today.

22 A. I do.

23 Q. Could you please identify him for
24 the record?

25 A. (Indicating).

1 Q. Thank you. Could you explain what
2 happened next after you made that
3 identification?

4 A. My driver interview, I cannot
5 remember if I did a passenger or driver's side
6 approach, but made my introduction and viewed
7 cell phone in the windshield mounted in the cell
8 phone holder still with an open text message
9 that had a name Jacob Trans and an unfinished
10 text message. And looking at my notes it had
11 said "Will be ready" but appeared to be
12 incomplete and not sent.

13 Q. Thank you. And moving back to the
14 document, the inspection, Staff's first exhibit,
15 is this document a Commission record?

16 A. Yes.

17 Q. Thank you. And is it kept in the
18 ordinary course of business?

19 A. Yes.

20 Q. Is it the practice of the Commission
21 to make a report such as this?

22 A. It is.

23 Q. Did you make a report for all
24 inspections even if there is no violation?

25 A. I did.

1 Q. Is the information in this document
2 substantially the same as when you prepared it?

3 A. It is.

4 Q. Thank you. And why did you produce
5 this report on an inspection of the motor
6 vehicle owned by Mr. Kutsar?

7 A. The reason was an obvious for
8 the driver manipulating a cell phone while
9 operating a commercial motor vehicle.

10 Q. Thank you. Did Mr. Kutsar get a
11 copy of the report at the stop?

12 A. He did.

13 Q. Did it differ in any way?

14 A. It did not.

15 Q. Thank you. Did the driver have
16 appropriate FMCSA status?

17 A. He did.

18 Q. I have no further questions unless
19 there is anything you feel that you need to
20 share at this time. And I would like to move
21 Staff's first exhibit into the record, please.

22 ATTORNEY EXAMINER: Just to make
23 clear, so in terms of marking your exhibits, the
24 Examination Report is Staff Exhibit 1. You
25 marked this letter as 2 and then --

1 MS. WNEK: I marked them how we
2 would be entering them.

3 ATTORNEY EXAMINER: Just checking.
4 Mr. Kutsar, do you have any objections to
5 the admission of this report into evidence?

6 MR. KUTSAR: Yes, your Honor. I
7 mean, I noticed something. First I would like
8 to apologize, I have no experience in this

9 ATTORNEY EXAMINER: That is okey.

10 MR. KUTSAR: The reason I -- I don't
11 have an attorney because the one I did hire
12 passed away and I thought they were going to
13 transfer my case to different lawyers in the
14 office, but apparently not.

15 And when this thing came along again
16 I thought -- I made some phone calls there and
17 it would too late and I wanted to resolve this,
18 and I just thought I would just come in myself.

19 ATTORNEY EXAMINER: Okay. I
20 understand.

21 MR. KUTSAR: What I am noticing
22 here, that the statement that the officer wrote
23 here says, the last sentence here, "Driver said
24 that people text and drive all the time." And I
25 was upset, and was upset, he was writing a

1 violation.

2 That kind of statement, I mean,
3 conversation that took place. I never said
4 those kind of words. I would never say
5 something like that, honestly.

6 And if I am -- I was testing my
7 truck because it was down for -- I was down, you
8 know, for about three months or so. And at the
9 same time I also received a transponder and I
10 was told by some people that it's activated,
11 some says no, it's not activated so I took it to
12 the Turnpike. So I am testing my truck, it was
13 after repairs also.

14 Also that testing my transponder and
15 did and activate again and everything is fine.

16 ATTORNEY EXAMINER: Sir, I am
17 sorry, but is this related to the statement on
18 this document? Otherwise I can certainly hear
19 all of this when you take the stand. I just
20 didn't want to do things out of order.

21 But in terms of this document, your
22 objection is on the grounds that this statement,
23 you actually didn't say this statement.

24 MR. KUTSAR: This never took place.

25 ATTORNEY EXAMINER: I understand.

1 So the objection is going to be overruled. This
 2 will be admitted, but the Commission will give
 3 this document the weight it's due. So, you
 4 know, you are on the record disputing that
 5 statement in this document, but otherwise it
 6 will still be given the weight it's due by
 7 the Commission when they make their decision.

8 So it's admitted. Thank you.

9 MR. KUTSAR: Okay.

10 ATTORNEY EXAMINER: So this will be
 11 admitted into evidence.

12 MS. WNEK: Thank you, your Honor.

13 (EXHIBIT ADMITTED INTO
 14 EVIDENCE)

15 ATTORNEY EXAMINER: Now, this is now
 16 your opportunity if you would like to cross this
 17 witness. So, any questions you have from about
 18 what he just said, or again, about what he said
 19 about this document, you can ask him those
 20 questions now. And that will be part of your
 21 case.

22 CROSS-EXAMINATION

23 By Mr. Kutsar:

24 Q. Sir, you are stating that you did
 25 perform the Level 3 inspection?

1 A. Yes.

2 Q. How?

3 A. Driver interview, verifying that the
4 license is valid, that you were not prohibited
5 through Drug and Alcohol Clearinghouse. Level 3
6 would also consist of markings, general
7 markings, your registration, and all the other
8 things that are checked during a Level 3
9 inspection.

10 Q. Did I give you my registration also?

11 A. From my recollection you did.

12 MR. KUTSAR: That is it.

13 ATTORNEY EXAMINER: Thank you. You
14 can excused. Thank you.

15 MS. WNEK: Your Honor, I would like
16 to call my second witness, but if Mr. Kutsar
17 wanted to testify now, I don't mind.

18 ATTORNEY EXAMINER: You can proceed
19 with your second witness, please.

20 MS. WNEK: Thank you. I will call
21 Mr. Brad Long with the Public Utilities
22 Commission.

23 (WITNESS SWORN)

24 - - -

25 BRADLEY LONG

1 called as a witness, being first duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 By Ms. Wnek:

5 Q. Please state your name for the
6 record.

7 A. It is Bradley Long.

8 Q. Thank you. Are you employed?

9 A. Public Utilities Commission
10 Transportation Division.

11 Q. Thank you. And what is your
12 position there?

13 A. I am Assistant Chief of
14 the Compliance Section.

15 Q. What are your duties in that
16 position?

17 A. Duties are to oversee the Compliance
18 Section, compliance officers, to shepherd cases
19 from the conference status through to the
20 hearing status. I oversee the letters that get
21 sent out, mailed out, and assist the Chief with
22 other duties as needed.

23 Q. Thank you. What are your
24 qualifications in the violations that are the
25 subject matter of the violations?

1 A. I was 24 and a half years on the
2 road as a State Highway Patrol Trooper, 26 years
3 total time with the Highway Patrol.

4 During that time I spent 10 years
5 with crash reconstruction and analysis unit
6 where I attended several training courses on
7 commercial vehicles, commercial braking systems,
8 ECM modules, log books.

9 After the ten years in crash
10 reconstruction analysis unit I got transferred
11 to the Licensing and Commercial Standards Unit
12 where I obtained certifications for North
13 American Standards Part A, B, hazmat, cargo
14 tank, other hazmat, bulk, school bus, motor
15 coach inspections.

16 I left the Highway Patrol to join
17 the Public Utilities Commission in 2019 where I
18 spent six months on the job training for my
19 current position and learned the Sales Force
20 program.

21 Q. Thank you. Could you describe how a
22 civil forfeiture is calculated for violations of
23 the National Motor Carrier Safety regulations
24 covered in the course of roadside inspections?

25 A. Absolutely. So when an inspector

1 does a motor vehicle inspection they have to
2 upload that information into a program called
3 Aspen. Aspen is then uploaded to the Federal
4 website and it comes back down into our
5 Safetynet system.

6 Sales Force then pulls that data
7 straight out of the Safetynet system just as it
8 looks like that on your inspection report. And
9 it takes these violations and it does -- if it's
10 a nonhazmat violation or nonhazmat inspection,
11 which this is, because you are not hauling
12 hazmat, it pulls that data and breaks down
13 the violations into groups.

14 So there is Group Zero -- and those
15 groups are based as designed essentially around
16 the likelihood of causing a crash, or leading to
17 a crash.

18 So Group Zero never has a fine.
19 It doesn't matter if they are an out of service
20 violation or if they are marked out of service,
21 Group Zeros never have a fine. That means the
22 likelihood of those violations resulting in a
23 crash is very, very limited. Groups 1 through 3
24 will only receive a fine if the inspector marks
25 those violations as out of service. So like

1 flat tire would put you out of service. You
2 know, a brake light being stuck on your trailer,
3 that would put you out of service. Those are
4 out of service violations and they are marked,
5 they would receive a fine.

6 Now, an equipment violation, one of
7 those 1 through 3, let's say ID light above your
8 tractor, it's not an out of service violation so
9 you will never receive a violation fine for
10 that.

11 Group 4 violations will always
12 receive a fine. And those violations are driver
13 behavior, driver actions, authority violations,
14 UCR, things like those. Those are always going
15 to receive a fine.

16 So when the system processes these
17 violations it breaks down those violations and
18 finds out what that violation is and puts it
19 into a group. So in this case that driving
20 while texting or driving while operating a cell
21 phone, those are Group 4 violations.

22 The system recognizes that, brings
23 it into the Group 4 population where it's
24 applied a fine. That fine is uniformly applied,
25 doesn't matter who gets it, doesn't matter what

1 driver, out of what company or where you are
2 from, it's always going to be that same value.

3 It's uniformly applied. Those
4 violations and fees are based on recommended
5 fine structure from the CVSA, Commercial Vehicle
6 Safety Alliance. So all those fines are based
7 on those recommendations. So everybody gets
8 those and they are standard, uniform across the
9 board.

10 MS. WNEK: Thank you. Your Honor,
11 may I approach the witness with Exhibit 2?

12 ATTORNEY EXAMINER: You may.

13 MS. WNEK: Thank you.

14 Q. Do you recognize that document?

15 A. I absolutely do.

16 Q. Thank you. And could you explain
17 what notices are required to be sent to the
18 Respondent?

19 A. So once that system processes the
20 violation and it calculates the forfeiture, the
21 very first notice that gets sent out to the
22 driver or the carrier is called an NIF letter is
23 what we call it.

24 It's a Notice of Apparent Violation
25 with Intent to Assess Forfeiture. That is your

1 first notification saying, hey, you have been
2 made aware of this violation, it does get a
3 fine, we are advising you of this fine.

4 And inside this letter it explains
5 your options. Either pay the fine in full or
6 request a conference. And you took part in that
7 process. So, that is the first part, that NIF
8 letter.

9 Q. Thank you. And what is the date on
10 that letter?

11 A. This one was dated March 17th of
12 2022.

13 Q. Based on your review of the file in
14 this case did the Respondent receive all
15 the required notices?

16 A. There is no indication that I am
17 aware of that anything was returned as
18 undeliverable.

19 MS. WNEK: Thank you. Your Honor,
20 may I approach the witness with Staff Exhibit 3?

21 ATTORNEY EXAMINER: You may.

22 MS. WNEK: Thank you.

23 Q. Do you recognize this document?

24 A. I absolutely do.

25 Q. Could you explain what that document

1 is?

2 A. This is what we call an NPD letter,
3 a Notice of Preliminary Determination. This is
4 the very last letter that you get sent only
5 after you have had a conference. So you go
6 through the conference procedure with a
7 compliance officer, that I oversee. If things
8 get worked out, a reduction or fees issued, then
9 you are generated a settlement letter.

10 The only time that you get an NPD
11 letter after a conference is if you either
12 cannot come to some kind of an agreement, you
13 wish to proceed to the administrative hearing
14 level, which we are at right now, or you can't
15 come to any kind -- you can't provide any kind
16 of evidence to remove or resolve either that
17 violation or you don't get into compliance, then
18 no offer of settlement is made. So you are
19 agreeing to the original amount.

20 So there is two times you will get
21 that NPD letter. You agree to the original
22 amount at conference, or you wish to proceed to
23 the administrative hearing level, which this was
24 done in this case.

25 Q. Thank you. And was the NPD that you

1 described sent to the Respondent?

2 A. Yes.

3 Q. Thank you. And is this Commission
4 record public?

5 A. Yes, it is.

6 Q. And is it kept in the ordinary
7 course of business?

8 A. It absolutely is.

9 Q. Thank you. And can you explain how
10 the civil forfeiture was derived here? Actually
11 no, take that back.

12 MS. WNEK: I have no further
13 questions at this time. I would like to reserve
14 Mr. Long for rebuttal.

15 ATTORNEY EXAMINER: Mr. Kutsar, do
16 you have any questions for this witness?

17 MR. KUTSAR: No.

18 ATTORNEY EXAMINER: Okay.

19 MS. WNEK: Your Honor, at this time
20 I would like to move Exhibits 1, 2 and 3 into
21 the record and make that official again, if it's
22 not already.

23 ATTORNEY EXAMINER: We admitted 1.
24 So, Mr. Kutsar, do you have objections to
25 admission of Exhibits 2 and 3, Staff's exhibits?

1 They are just letters.

2 MR. KUTSAR: No.

3 ATTORNEY EXAMINER: Then Staff's
4 Exhibit 2 and Staff's Exhibit 3 are also
5 admitted.

6 (EXHIBITS HEREBY ADMITTED INTO
7 EVIDENCE)

8 MS. WNEK: And at this time, Mr.
9 Kutsar, are you interested in explaining why you
10 don't agree with this violation?

11 ATTORNEY EXAMINER: And your case
12 is set then?

13 MS. WNEK: Actually I will speak
14 with -- your Honor, I think we will rest at this
15 time. We believe based on what we have shown
16 you through the documents in the record as well
17 as the testimony that Mr. Kutsar has committed
18 this violation in question.

19 ATTORNEY EXAMINER: Thank you. Mr.
20 Kutsar, this is your chance to present your
21 case. If you would like to come up to the
22 stand.

23 (WITNESS SWORN)

24 VICTOR KUTSAR
25 called as a witness, being first duly sworn,

1 testified as follows:

2 DIRECT TESTIMONY

3 ATTORNEY EXAMINER: Before you begin
4 your testimony I would just ask you to state and
5 spell your name for the record.

6 THE WITNESS: Vector, V-I-C-T-O-R
7 K-U-T-S-A-R. 758 Grayton Road, Berea, Ohio
8 44017.

9 ATTORNEY EXAMINER: Thank you very
10 much. You can proceed with your testimony.

11 THE WITNESS: As I was saying, that
12 my truck was down for about three months or so.
13 And was under repairs and also through Christmas
14 vacation, stuff like that.

15 But, I was ready to go to work and
16 made a phone call to Jacob who lines up loads
17 for me. And in the mean time I decided to, you
18 know, test my truck after the repairs.

19 Also at the same time I did receive
20 a transponder that I never had one before and in
21 combination pretest for Easy Pass. So I didn't
22 know how it would work on the Turnpike.

23 I was told that it needs to be
24 activated, some say no, so I just decided at the
25 same time do these checks.

1 My phone also was malfunctioning and
2 like, it was an older phone, and the screen
3 would not come on right away, you know, tap
4 once, twice, you know. Not always the same.
5 It was doing all different.

6 And also my GPS was glitching and it
7 would freeze up right in the middle of following
8 directions. It happened to me. I am like --
9 so, when I got off the Turnpike I got on the 71
10 going back to the yard and then I remembered,
11 well, I should check my, you know, GPS as well.

12 Before I left the house -- with
13 Jacob they have like a policy, like if you make
14 a phone call then you have to follow up with a
15 text message. I made a phone call, started
16 texting, got interrupted, maybe my wife, I don't
17 remember what happened, why I stopped texting at
18 that time. So, then I left.

19 When -- I decided to turn it back on
20 and check my GPS even though I was getting
21 close, just before you get off the freeway.
22 I decided to turn it back on, turn the GPS on
23 and see what it's doing because still had a
24 little time to take it to Verizon because I am
25 using GPS a lot.

1 That is when the whole thing
2 happened, you know, I was observed by the
3 officer. Pulled over because of that. And I
4 didn't know exactly, I mean, I saw his letting
5 me know. So I pulled over.

6 Officer ran to my truck, jumped on
7 the right passenger side. I am sorry, I have to
8 say, but almost fell off the truck while
9 climbing and jumped in it. Right away looks at
10 my phone. Well, my phone did finally -- when
11 all that happened and my phone came on, I am
12 going to open up, you know. And if you look at
13 this now, you know, this screen it was
14 previously on, you know, open that is what -- I
15 said coincidence, you know.

16 And when he jumped in my truck and
17 asked me why am I texting, well, you were
18 texting. Sir, I am not texting, just trying to
19 explain myself. He isn't listening to me. Then
20 it took a second and says what were you doing?
21 I said I was trying to bring my GPS on. Where
22 do you live? I said, well, not far from here.
23 So you need a GPS to get home?

24 I felt humiliated. He laughed at
25 me, he was laughing at me, really. And he

1 didn't want to listen to me. He said you did
2 it, I got you. There was no inspection like --
3 he just took my, you know, driver's license, you
4 know. I don't remember giving my registration.
5 I don't remember that. And then he came back
6 and that was it.

7 And now when I am reading -- when I
8 read this it says driver said that people text
9 and drive all the time. I am sorry, I am sorry.
10 I had my brain together. I mean, I will
11 never -- and if I would do something wrong I
12 would probably turn it off or erase it,
13 something, you know. But I didn't know I was
14 doing something wrong there, you know.

15 I observed him in the mirror, he was
16 running and I sat there and watched him and
17 everything. And I didn't know that it was a
18 violation to get to my GPS. And then I did take
19 my phone to the Verizon and they said just --
20 they just looked at it, sometimes comes on,
21 sometimes it doesn't. It's an older phone, you
22 know. Do you want to replace it.

23 Well, at that time it settled down
24 and I didn't replace the phone at that time.
25 But shortly after I did, you know.

1 So, and I wrote the letter and
2 everything and nothing seemed like it works.
3 And why, and then, you know, Mr. Hines, Michael
4 Hines, called me the first time, he read this
5 and I am like, wait a minute, I never said those
6 words. This is the words actually making
7 everybody doubt that I didn't commit the crime
8 or, I mean, commit -- nothing wrong, you know.

9 And I have been driving for so many
10 years and, you know, this will just -- it's real
11 hard times to survive while you are down. As a
12 matter of fact, it doesn't concern this case,
13 but I was coming home now and I was in Montana
14 and my fuel was siphoned, \$488 and we were under
15 stress, lots of stress.

16 And something like this, I don't
17 think -- if I get this kind of accusation I
18 don't think it's right. That is what I had to
19 talk to you, your Honor. And since you are the
20 Judge. I don't know what to say. I apologize
21 for talking this way.

22 ATTORNEY EXAMINER: That is fine.
23 That's what you are here for, to get your --

24 THE WITNESS: I don't have
25 experience at this.

1 ATTORNEY EXAMINER: You know, nobody
2 but attorneys do. So, understandable. I have
3 just a couple questions for you just to make
4 sure I have got it clear.

5 EXAMINATION

6 By the Attorney Examiner:

7 Q. So you used your phone as your GPS,
8 correct, or it's your program on your phone?

9 A. Yes, sir. And the officer stated
10 too that it was on the windshield, mounted, and
11 it wasn't in my hand.

12 Q. So you have like a holder that is --

13 A. Yes. And he also observed it.

14 Q. So your testimony just so I am
15 clear, you used the phone for the GPS and
16 essentially when you need to see it, say it's
17 running and it's got directions for you, the
18 screen doesn't just stay on the whole time
19 showing that, or just at that point --

20 A. When it's in the GPS mode it will
21 stay on, but it was freezing up on me, you know.
22 So at that time when I was pulled over I didn't
23 have it on while, you know, I wanted to bring
24 the GPS on to see if it's going to take me to my
25 yard and it's not got a glitch or anything like

1 that.

2 It never happened, but that was
3 the reason because it would freeze up on me, you
4 know, from time-to-time.

5 Q. Okay. So it's your testimony that
6 when he approached the vehicle it should have
7 displayed your phone was displaying the GPS
8 screen and not a text message screen?

9 A. No. When I finally opened up --
10 when the screen came on it was on the old
11 screen, which was in the texting mode that never
12 was finished, was in a draft or something. And
13 I also have a, here, (indicating) from Verizon
14 showing that nothing was sent or received for
15 the inspection.

16 And I have here handwritten. The
17 phone is on Pacific time. And I just made it,
18 you know, to Eastern time here. Nothing was
19 done.

20 So, this is the hole part here that,
21 you know, I don't know how else to explain and
22 prove it that I wasn't texting at the moment,
23 you know. When I pulled up the screen, you
24 know, I was in a texting mode and I was just
25 going to get to my GPS. That is all I can say.

1 I don't know what else to say.

2 Q. Do you plan to try to offer that
3 record into evidence or --

4 A. This?

5 Q. Yes.

6 A. Yes.

7 Q. Because if you do there is some
8 things we need to do. And then, of course,
9 Staff will be given an opportunity to object.
10 But, if that was your intent, we can do that.

11 A. If that is going to help me, you
12 know, I mean.

13 Q. I think anything that you feel would
14 be beneficial to you you should at least attempt
15 to get into the record. That is the best thing
16 for you to do, at least as far as getting a
17 complete record for this case.

18 So if you would like to do that you
19 would need to testify to that document, you
20 know, explain what that is. I assume you only
21 have one copy of it?

22 A. No.

23 Q. Did you bring multiple copies?

24 A. Yes. I made some for myself too.

25 Q. Because you need to provide a copy

1 at least for the court reporter and then a copy
2 for Staff, and I assume you would want some time
3 to look at that.

4 MS. WNEK: Yes. We would object to
5 that being distributed here in court today
6 because we have not had a chance to see that,
7 and there is no -- it's not been certified to
8 our understanding. And we object.

9 ATTORNEY EXAMINER: Let's go off the
10 record, Mike.

11 (DISCUSSION OFF THE RECORD)

12 ATTORNEY EXAMINER: Let's go back
13 on the record. So just for the record we had a
14 brief discussion off the record about a document
15 that Mr. Kutsar intends to proffer. And you
16 stated you made make copies of that document?

17 THE WITNESS: Yes. So, here.
18 Second copy I will give to you?

19 ATTORNEY EXAMINER: You have two
20 total?

21 THE WITNESS: Yes. With this
22 explantation. On this copy I don't have
23 the handwriting. I mean, what I did is convert
24 this to Eastern time and Western time, easier.
25 Three hours difference.

1 ATTORNEY EXAMINER: I understand

2 THE WITNESS: I don't have it here.

3 I am sorry. I didn't know that I am going to
4 have this.

5 ATTORNEY EXAMINER: Let's go off
6 the record.

7 (DISCUSSION OFF THE RECORD)

8 (RECESS TAKEN)

9 ATTORNEY EXAMINER: Let's go back
10 on the record. We are now back on the record.
11 Just for again the sake of the record I will
12 recount that we had a brief recess to copy some
13 documents.

14 So, Mr. Kutsar, just to kind of lead
15 this, I know this is new territory for you, what
16 you need to do now is similar to what Inspector
17 Bauer did earlier with Staff counsel where she
18 asked him some questions about the document.
19 You would need to then, obviously without
20 counsel asking you questions, you will just need
21 to speak, but just kind of state what this is
22 and, you know, how you acquired it and why you
23 have it.

24 And then after that Staff will
25 cross-examine you and ask you questions. Then

1 we will proceed from there.

2 THE WITNESS: Okay.

3 ATTORNEY EXAMINER: For simplicity
4 sake we will just mark this as Respondent's
5 Exhibit 1.

6 (EXHIBIT MARKED FOR IDENTIFICATION)

7 ATTORNEY EXAMINER: So what I am
8 going to need you to do is essentially describe
9 this document, yes. Gave its characteristics
10 saying what it is, and again how you acquired
11 it, why you are offering it, what it's meant to
12 show.

13 THE WITNESS: Yes. So this is a
14 document that was from Verizon system and I got
15 this -- actually my wife helped me out with
16 this. And we went in there and just pulled this
17 information, copied it and made this adjustment
18 here so it's easier to, you know, to be read,
19 and more understandable since the different
20 times. My phone is on Pacific time and we are
21 in Eastern time here. So just made it a little
22 bit easier.

23 And here it shows that nothing was
24 received or sent out before the inspection was
25 done. There is a mark that I made, something

1 did come in during the inspection on 5:12
2 Eastern time P.M.

3 And other than that it was during
4 the inspection. This started at 5:01 and ended
5 on 5:30 P.M.

6 ATTORNEY EXAMINER: So now you are
7 subject to cross by Staff. So, Ms. Wnek, do you
8 have any questions?

9 MS. WNEK: Thank you. I suppose
10 we can begin with this exhibit. I do not see a
11 time zone on this exhibit. Or, I understand
12 other than handwritten time zones.

13 And so that would be our first
14 objection with that; that these are handwritten
15 time zones. And I also, I mean, even if this
16 was to be a document, you know, demonstrating
17 text message, the date on -- the time on the
18 inspection report is about 5:00 P.M. and 5:01 if
19 I am not mistaken is in 24 hour time.

20 But I see on this exhibit of
21 the Respondent that on 3/15 there is a 4:56 P.M.
22 listed as the time. Now, I understand that that
23 has been changed to Western time, or that claims
24 to be transferred to Eastern time, but that is
25 only -- that is demonstrated only by the

1 handwriting. That is not anything -- that is
2 demonstrated by handwriting, there is no
3 indication from Verizon this is an official
4 document. And this is something that could
5 pretty easily be created on Microsoft Excel
6 spreadsheets.

7 And also I wonder even if this were
8 a record from Verizon would we get the same
9 results if text messages had been deleted within
10 the phone prior to seeking this report?

11 We can delete voice mails and, you
12 know, get a record of the voice mails on our
13 phone and that wouldn't be your voice mails sent
14 and received by us, they wouldn't be showing on
15 our report like that if it was deleted. So,
16 there is also that. You know, we believe that to
17 be the case.

18 THE WITNESS: It wasn't what --
19 whatever was typed there it wasn't deleted, you
20 know, the officer did observe that.

21 CROSS-EXAMINATION

22 By Ms. Wnek:

23 Q. I am sorry. Could you say that
24 again, please?

25 A. I am saying officer observed that,

1 that was typed on, I admit to that. It was
2 typed on but it wasn't typed at that time.

3 And it wasn't deleted because, you
4 know, I don't know -- I wrote this just so it
5 would be easier, like I said, I have no
6 experience. That is why maybe, you know, I
7 should have keep my lawyer with me, but he
8 passed away. I am sorry.

9 Q. If I could -- I am sorry. I didn't
10 want to interrupt.

11 A. I don't want to talk too much. I
12 am sorry.

13 Q. I was going to say, you said it
14 wasn't -- the screen was illuminated, I suppose,
15 why would the screen be illuminated if that
16 wasn't texting at that time? If that is what I
17 just heard you say. I am sorry.

18 A. What?

19 Q. You said, well, the screen was --
20 you mentioned that when you were pulled over by
21 Mr. Bauer that I thought I heard you say, well,
22 the screen was illuminated, and there was a
23 text, but not at that time. Is that my
24 understanding from --

25 A. The screen was illuminated because I

1 was trying to bring it on, open the screen.

2 Okay?

3 Q. Thank you.

4 A. To get to my second thing, but when
5 it opened it was on the previous screen that I
6 started at home and never finished it.

7 Q. So you were opening it. That is --

8 A. I was opening it and, I mean, you
9 can try on your phone right now if you leave it
10 on the text mode and turn it off, you bring it
11 on it's in the text mode, you know.

12 So all I have to do is switch to the
13 GPS and that is where the whole thing happened.

14 Q. As you were opening it, I am sorry,
15 what do you have to do exactly to get to GPS?
16 When you say open, can you describe what you
17 physically do on your phone, please?

18 A. Yes. You know, tap the phone, open
19 it, GPS.

20 MS. WNEK: Thank you. And I would
21 like the record to demonstrate, Your Honor, that
22 this sort of demonstration is being claimed as
23 what is done, what was done that day, looking at
24 the phone and opening it. Thank you.

25 Q. Could we go back to your position at

1 Jacob? How long have you been in that role?

2 A. I don't know. I don't remember
3 exactly how long. But we -- the lease
4 agreement, which is through Jacob, and but how
5 long, I don't remember how long I was with these
6 people.

7 Q. You began to describe the process
8 that Jacob requires as you are transporting
9 materials for them. Could you sort of go into
10 that step process as you are ready to take a
11 shipment, or how that gets put into place,
12 please?

13 A. It's like this. Like, I call them
14 to tell them that I will be ready, they have
15 some loads for me. And that is it. I don't
16 know what else.

17 Q. I guess, how is your device used?
18 How is your telephone, cell phone, how does your
19 cell phone help you with your job? How does
20 that help you, how is that part of the process
21 as you transport materials?

22 A. I call them from home, and if they
23 find something they call me back.

24 Q. Okay.

25 A. And I have an ear piece in my truck

1 also that I am using for answering the phone.

2 Q. You testified that part of
3 the process was using your phone as a GPS, and
4 then you had to test it if I am not mistaken
5 after that. Is that part of the procedure?

6 A. No, no. After phone call, after I
7 make a phone call, I have to follow up with a
8 text message which I started it, I never
9 finished it, at home.

10 And then while I was going through
11 these tests in my truck and transponder I was
12 going to test my GPS as well. I never got to it
13 because I was pulled over.

14 Q. Okay. So but you were pulled over
15 as you were driving?

16 A. And the officer says that -- stating
17 that I got across the white line, but, no, no,
18 it's what he says.

19 Q. I am not worried about the white
20 line. This is not a violation of the white
21 line. I am just trying to get a feel for what
22 your procedure is.

23 You mentioned that you were driving
24 at this point, you were driving because you were
25 being pulled over as you were doing some checks

1 on your device trying to get -- you mentioned
2 get the GPS going again is my understanding;
3 right? You were using your device to get
4 the GPS going; is that correct?

5 A. Yes, ma'am. GPS is part of my job,
6 you know. And that helps me to get from point A
7 to Point Z.

8 MS. WNEK: Your Honor, I would like
9 the record to reflect that Mr. Kutsar has just
10 explained to us that he uses his GPS, uses his
11 phone as he is driving to connect with GPS,
12 from what I understand.

13 Q. You mentioned that it freezes on
14 you. What happens when it freezes on you? How
15 do you -- how often --

16 A. I have to reboot it to turn it off
17 and turn it back on.

18 Q. And how do you do that?

19 A. By turning it off, you know. And
20 if, like I said, the phone is on the windshield
21 and it's not -- it wasn't in my hand or anything
22 like that. And there is nothing I can do, the
23 phone wasn't working.

24 And I don't know why we are going
25 this way, and we -- what walking away from this

1 statement that the officer mentioned that I
2 wrote here that the driver said that people --
3 driver said that people text and drive all the
4 time.

5 Why we don't pay attention to that?

6 Q. I am sorry. Who doesn't pay
7 attention to that?

8 A. No, you know, we are talking
9 about -- listen, I apologize. I don't know what
10 to say here.

11 Q. Did you say that, is that something
12 you would have said?

13 A. No. I don't know whoever said that.

14 Q. Could you state where you were
15 pulled over, about how far that was away from
16 your home?

17 A. It was close to Pearl Road exit, and
18 I get off an exit from that. On Bagley. So
19 maybe 5, 8 miles, maybe less.

20 Q. So is it typical that you would need
21 to use GPS when you are that close to your home?

22 A. No, ma'am. I thought I made myself
23 clear by stating that on the way back home I
24 wanted to test my GPS. And didn't need the GPS
25 to get home, and now I am kind of feeling

1 humiliated again.

2 MS. WNEK: Thank you. I don't
3 believe I have anything further at this point.
4 Just our understanding that the phone is used in
5 the car to open things up and it freezes and it
6 has to open things up. That is our
7 understanding.

8 Nothing further for this witness,
9 your Honor.

10 ATTORNEY EXAMINER: Thank you. So
11 with that, Mr. Kutsar, if you want you can move
12 to admit your exhibit into evidence. And then
13 Staff will be able to tender an objection, I
14 will have to rule on that, and we will go from
15 there.

16 MR. KUTSAR: I have to admit to
17 what?

18 ATTORNEY EXAMINER: What you do is
19 when you wish for an exhibit like this document
20 you brought you can put it into the record, you
21 have to move for admission. So if you would
22 like to do that, you just need to say that, then
23 we will proceed.

24 MR. KUTSAR: I would like to do
25 that.

1 ATTORNEY EXAMINER: Okay. Ms. Wnek,
2 do you wish to enter an objection to
3 the admission of Mr. Kutsar's Exhibit 1?

4 MS. WNEK: We do. Thank you, your
5 Honor. It's not a document we have seen, there
6 is nothing on there demonstrating it is
7 legitimate.

8 ATTORNEY EXAMINER: Thank you. The
9 objection is going to be overruled. It's going
10 to be admitted, and it will be given the weight
11 it's due.

12 (EXHIBIT ADMITTED INTO EVIDENCE)

13 ATTORNEY EXAMINER: You can step
14 down, Mr. Kutsar.

15 MR. KUTSAR: Thank you, your Honor.

16 ATTORNEY EXAMINER: Are there any
17 last minute pending matters?

18 MS. WNEK: Nothing, your Honor. We
19 would just like to state that we believe the
20 record speaks for itself in this instance.

21 You know, the testimony of Mr. Bauer
22 as well as the testimony of Mr. Kutsar himself,
23 you know, demonstrates that Section 392.80A was
24 violated. Nothing further, your Honor.

25 ATTORNEY EXAMINER: Thank you.

1 Anything further, Mr. Kutsar?

2 MR. KUTSAR: No, sir.

3 ATTORNEY EXAMINER: Thank you very
4 much. Thank you all for being here today. We
5 are adjourned.

6 MS. WNEK: Thank you, your Honor.

7 (At 11:10 A.M. the hearing was
8 concluded)

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on August
22, 2023, and carefully compared with my
original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

- - -

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Case No(s). 22-0570-TR-CVF

Summary: Transcript August 22nd 2023 In the Matter of Victor Kutsar Notice of Apparent Violation and Intent to Assess Forfeiture. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr..